

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Bowen

Analyst: LuAnna Hass

Bill Number: SB 25

Related Bills: See Prior Analysis

Telephone: 845-7478

Amended Date: March 6, 2003

Attorney: Patrick Kusiak

Sponsor: \_\_\_\_\_

**SUBJECT:** Personal Information Confidentiality

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced December 2, 2002.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED December 2, 2002, STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would limit a person or entity's ability to use social security numbers (SSNs) as personal identifying numbers.

This bill also would make changes to the Civil Code with regard to consumer credit reporting agencies, which do not affect the department.

## SUMMARY OF AMENDMENTS

The March 3, 2003, amendments added co-authors and made changes to the Civil Code with regard to consumer credit reports, which do not impact the department. The amendments also made changes to the Civil Code provision restricting the use of SSNs. Specifically, the amendments would:

- Remove the specific reference to state and local agencies as being restricted in their use of SSNs, which would leave the restriction applying to a person or "entity;"
- Remove language that excluded state and local agencies from the provision stating services must not be denied to an individual because the individual makes a written request to that agency to cease using his or her SSN;
- Add a restriction that prohibits a person or entity from recording or imbedding an SSN in or on a card or document using technology that includes, but is not limited to, bar codes, chips, magnetic strips, or other technology; and
- Make various technical changes to the bill language.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Brian Putler

Date

04/02/03

Since the department is an “entity” of state government, the provisions of the bill that restrict the use of SSNs by a person or entity would still apply to the department. As a result of the March 6, 2003, amendments, the department has identified an additional implementation consideration. For convenience, all new and existing implementation and technical concerns are provided below. In addition, a revised fiscal impact has been provided. The remainder of the department’s analysis of the bill as introduced December 2, 2002, still applies.

## **POSITION**

Pending.

## **IMPLEMENTATION CONSIDERATIONS**

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

### **Existing Concerns:**

- The author's office has indicated that it is not its intent to require Franchise Tax Board (FTB) to cease using SSNs as identifying numbers. Instead, the intent of the author is to restrict FTB’s ability to print SSNs on mailings to taxpayers. The author may wish to provide an exemption for FTB or specify that this provision would not apply to FTB to the extent needed to fulfill its statutory obligations.
- This bill would prohibit a state agency from mailing documents to an individual containing their SSN. In addition, this bill contains an exemption that would allow a state or local agency that has used, prior to January 1, 2004, an individual’s SSN in a manner prohibited by this bill to continue using that individual’s SSN after January 1, 2004, if specific conditions are met. After preliminary review, the department may be able to meet the conditions set forth in the bill, which would allow the department to continue mailing documents containing an individual’s SSN. See “Fiscal Impact,” below for the department’s estimated cost to satisfy the conditions. However, specifying the use of “an individual’s SSN” could be interpreted that the use of the SSN could be made on a case-by-case basis as opposed to a department-wide basis. For example, the department could continue to use a particular taxpayer’s SSN if that taxpayer has received documents containing the SSN prior to January 1, 2004. Similarly, the department could be prohibited from using a particular taxpayer’s SSN if that taxpayer had not received any documents with the SSN prior to January 1, 2004. It would be difficult for the department to implement this provision on a taxpayer-by-taxpayer basis. The department would have to identify all individuals that received any document from us prior to January 1, 2004, so that the department could program the system to continue mailing documents containing SSNs to those taxpayers. Once those changes are made, the department’s systems would be further programmed to ensure all other taxpayers (those that did not receive mailings prior to January 1, 2004) would receive documents that do not include SSNs. If the author intends for FTB to use the exemption in this bill, it is suggested that the extent of the implementation be on a department-wide basis, treating all taxpayers equally and eliminating the confusion regarding the two different classifications of individuals. Further, for clarity, the author may wish to provide a specific exemption for FTB, as noted in the previous concern.

As stated above, the author's office has indicated that the intent of this bill is to restrict the department's ability to include SSNs on documents mailed to taxpayers. Therefore, the department further analyzed the bill under the assumption that the department would not be able to use the exemption.

- A definition is needed for the term "administrative purposes." For example, in addition to documents mailed to taxpayers that contain their SSN, the department, like all state agencies, mails various personnel documents to employees that contain the employee's SSN. State agencies could be required to remove the SSN from these documents, unless the term administrative purposes was clearly defined to include employee-related matters.
- In addition to mailing documents containing SSNs to "individuals" such as taxpayers and employees, the department mails documents such as garnishments and levies to third parties such as a taxpayer's bank, employer, or landlord. Absent a clear definition of individual, the department would continue to send garnishments and levies containing the individual's SSN to these third parties.
- The department provides copies of tax returns and other printed documents filed by taxpayers to taxpayers upon request. Although the copy of the tax return contains the SSN as entered by the taxpayer, the tax return is considered a form. Under this bill, the SSN restriction does not extend to forms. Absent clarification, the department would continue to include the SSN on copies of returns and other documents mailed to the taxpayer.
- Although state and federal laws require the SSN to be used as the identifying number for individual taxpayers, it does not specifically *require* the use of the SSN on every document that may be mailed to a taxpayer. Under this bill, these documents could no longer contain the taxpayer's SSN. Thus, modification to the Personal Income Tax (PIT) mainframe and related computer systems would be necessary to implement this bill. The department's implementation plan must contain a strategy to minimize taxpayer confusion and disruption to the PIT program. Staff is working to determine the best department-wide implementation method. Since any implementation plan would require extensive system programming, testing, and processing, as discussed below under "Departmental Costs," the department could not fully implement this provision of the bill by January 1, 2004.

To meet the intent of the bill to eliminate SSNs on material mailed to the taxpayer without major PIT program disruption and to minimize taxpayer concern, department staff recommends an extended implementation date for FTB. This extension would reduce the implementation urgency and:

- enable FTB to plan effectively for needed changes to minimize taxpayer concern and disruption to the PIT program;
- enable FTB to obtain funding to implement the bill through the budgetary process for 2003/2004 and thereafter, in the event the department does not receive an appropriation in this bill;
- enable FTB to work with the author to identify any clean-up legislation where provisions may be subject to misinterpretation;
- reduce departmental costs in subsequent years that otherwise would be attributable to overtime and contracting for additional resources.

The attached Amendment 4 is provided at the request of the author's staff. The amendment would give FTB a three-year extension on the implementation date of this bill. See "Fiscal Impact" below for the impact this amendment would have to department costs to implement this bill.

New Concern:

- This bill would prohibit a person or entity from recording or imbedding an SSN on a document using various technologies such as bar codes, chips, or magnetic strips. It is unclear if the terms “record” or “imbed” would prohibit FTB from implementing any of its preliminary strategies to replace the SSN on documents with another identifier. These strategies include, but are not limited to, modification of the SSN, truncation or other derivative form of the SSN, encryption, or the creation of a unique identifier to replace the SSN. According to the author’s staff, the intent of this bill is to prevent persons or entities from using encryption or certain types of modified SSNs in place of removing the SSN from documents. Department staff suggests amending the bill to specify the alternatives that would be prohibited.

TECHNICAL CONSIDERATIONS

This bill refers to an annual disclosure to the individual informing them of their right to stop the use of their SSN if it is being used in a manner prohibited by this law. However, this bill states the annual disclosure shall start in 2002. For clarity, it may be preferable to specify that the annual disclosure for state or local agencies shall start in 2004. Please see Amendments 1 and 2 attached.

The prohibitions in this bill would not apply to documents open to the public pursuant to the Ralph M. Brown Act (for local legislative bodies). For purposes of state agencies, the author may wish to include the Bagley-Keene Open Meetings Act. Please see Amendment 3 attached.

**FISCAL IMPACT**

As discussed under “Implementation Considerations,” staff is uncertain how this bill would be implemented and costs cannot be determined until implementation concerns have been resolved. However, if the department is required to remove SSNs from notices mailed to the taxpayer, cost estimates range from \$1.5 million to \$1.75 million. This cost includes costs resulting from increased customer service contact, processing hours, programming, testing, and maintaining departmental systems. The cost has been decreased from the estimated range of \$3.0 to \$4.1 million that was included in the department’s analysis of the bill as introduced December 2, 2002. This updated range reflects the in-depth analysis of the strategies available for the department to effectively implement this bill.

As discussed under “Implementation Considerations,” the department may be able to continue using the SSN on documents mailed to taxpayers if the department were able to utilize exemptions under this bill. This estimate does not include the costs to meet the conditions of the exemption. Until the department receives clarification, the costs for this provision cannot be determined.

As stated above, the department could not fully implement this bill by January 1, 2004. However, the author's staff has requested an amendment to extend the implementation date for FTB for three years, to January 1, 2007. To ensure the department has the funding to implement this bill, the department would suggest the author add appropriation language to this bill that would cover the full costs of implementation. At a minimum, department staff suggests appropriation language that would provide FTB \$540,000 for the 2003/2004 fiscal year. This would allow the department to begin an implementation plan to remove SSNs from mailings in accordance with the bill. Please see Amendment 4 attached. Absent an appropriation, the implementation date extension would allow the department to go through the normal budgetary process for the funding. The department is currently working on Budget Change Proposals (BCP) for the 2004/2005 fiscal year. However, absent an appropriation or Department of Finance approval of a BCP for the 2004/2005 fiscal year or subsequent years, the department would be required to redirect staff from other revenue generating activities of the department, such as collections administration or audit, to administer this bill.

#### **LEGISLATIVE STAFF CONTACT**

LuAnna Hass  
Franchise Tax Board  
845-7478  
[LuAnna.Hass@ftb.ca.gov](mailto:LuAnna.Hass@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[Brian.Putler@ftb.ca.gov](mailto:Brian.Putler@ftb.ca.gov)

Analyst	LuAnna Hass
Telephone #	845-7478
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 25  
As Amended March 6, 2003

AMENDMENT 1

On page 10, line 21, strikeout "disclosure," and insert:  
disclosure

AMENDMENT 2

On page 10, line 22, strikeout "commencing in the year 2002,"

AMENDMENT 3

On page 11, revise line 1 to read as follows:

of Division 7 of Title 1 of, Chapter 1 (commencing with Section 11120) of Part 1  
of Division 3 of Title 2 of, or Chapter 9 (commencing with Section

AMENDMENT 4

On page 12, after line 23, insert:

SEC 4. (a) There is hereby appropriated from the General Fund for expenditure in the 2003-2004 fiscal year the sum of five-hundred forty thousand dollars (\$540,000) for allocation to the Franchise Tax Board in augmentation of Item 1730-001-0001 of the Budget Act of 2003.

(b) Any funds that are allocated pursuant to subdivision (a) shall be expended by the Franchise Tax Board solely for the purposes of implementing and administering the provision regarding Social Security Numbers under Section 1798.85 of the Civil Code.

SEC. 5. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the Constitution and shall go into immediate effect.

SEC 6. Section 3 of this act shall become operative with respect to the Franchise Tax Board on January 1, 2007.